

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: CS/SB 2548

INTRODUCER: Banking and Insurance and Senator Detert

SUBJECT: Loan Origination

DATE: March 24, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Snider	Burgess	BI	Fav/CS
2.			CM	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

In 2009, the Legislature passed a bill that brought the state into compliance with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 or "S.A.F.E. Act." The S.A.F.E. Act provides for greater accountability and regulation of loan originators and enhances consumer protections. It establishes regulatory requirements for individuals, rather than businesses. The law provides for a transition from the current licensure system and categories of licensees to a system meeting minimum federal requirements.

This bill defines a "loan processor" as an individual licensed as a loan originator but only performing clerical or support duties. This definition is consistent with federal law. If the individual wishes to work for multiple employers, (s)he must file a "declaration of intent to engage solely in loan processing" with the Office of Financial Regulation.

A loan processor may be employed by a company other than a mortgage broker or mortgage lender. This bill provides an exception to Florida Statutes, which prohibit the payment of fees or commissions in any mortgage loan transactions to any person or entity other than a licensed or exempt mortgage broker or lender.

The bill removes the current statutory requirement that mortgage lenders file a new license application upon a change of control in the business.

The bill provides clarifications as to disclosures provided as part of the good faith estimate process and requires that the borrower acknowledge receipt of the disclosure by signing and dating the document. Additionally, the bill removes the requirement that mortgage lenders file a new license application because of a change of control in the business.

The bill also reenacts s. 494.00255(1)(m), F.S., thereby providing a basis for disciplinary action by the Office of Financial Regulation for violating provisions of the federal Real Estate Settlement Procedures Act, the federal Truth in Lending Act, or any regulations adopted under such acts, regarding mortgage transactions.

II. Present Situation:

In 2009, the Legislature passed a bill which brought the state into compliance with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008¹ or "S.A.F.E. Act." The S.A.F.E. Act provides for greater accountability and regulation of loan originators and enhances consumer protections. It establishes regulatory requirements for individuals, rather than businesses, licensed or registered as mortgage brokers and lenders, collectively known as loan originators. The S.A.F.E. Act's definition of "residential mortgage loan" includes a loan secured by a consensual security interest on a "dwelling," to include a mobile home or trailer if it is used as a residence.¹ Therefore, in accordance with the S.A.F.E. Act, motor vehicle retail installment sellers are considered mortgage brokers or mortgage lenders. The bill passed by the Legislature provided for a transition from the current licensure system and categories of licensees to a system meeting minimum federal requirements.

Presently, Florida requires licensure of individual mortgage brokers, as well as mortgage broker and mortgage lender business. However employees of the mortgage lender businesses are not separately licensed. In addition to satisfying other minimum requirements, the law requires state licensure and annual renewal of individual loan originators, including employees of mortgage broker and mortgage lender businesses; this provision is effective Oct. 1, 2010.

Presently pending law changes definitions and creates new sections of statute, while repealing others. Effective October 1, 2010, loan originators, mortgage brokers, and mortgage lenders will be subject to administrative penalties under ch. 494, F.S., in a single statutory section. Currently, mortgage brokers and mortgage lenders are treated separately in s. 494.0041(2)(v), F.S., and s. 494.0072(2)(v), F.S., respectively. Those sections are repealed effective October 1, 2010.²

In 2008, the Board of Governors of the Federal Reserve System published its final rule amending Regulation Z of the Truth in Lending Act creating new restrictions or requirements for mortgage lending and servicing.³ With one exception,⁴ those changes were effective October 1, 2009.

¹ Pub. L. 110-289, 122 Stat. 2654 (2008) at Title V, sec. 1503(8); 12 C.F.R. § 226.2(19).

² Chapter 2009-241, L.O.F., at ss. 37, 56.

³ 12 C.F.R Part 226 (Federal Register / Vol. 73, No. 147 / Wednesday, July 30, 2008).

⁴ Mortgages secured by manufactured homes.

Also in 2008, the United States Department of Housing and Urban Development published its final rule amending parts of Regulation X of the Real Estate Settlement Procedures Act, to include substantial revisions to the Good Faith Estimate and to require settlement disclosures.⁵ Those changes were effective January 16, 2009.

As a general rule, a cross-reference to a specific statute incorporates the language of the referenced statute as it existed at the time the reference was enacted, unaffected by any subsequent amendments to or repeal of the incorporated statute.⁶

III. Effect of Proposed Changes:

Section 1. This section reenacts s. 494.00255(1)(m), F.S., regarding a basis for disciplinary action by the Office.⁷ Section 494.00255(1)(m), F.S., provides that violating any provision of the federal Real Estate Settlement Procedures Act (“RESPA”), as amended, 12 U.S.C. ss. 2601 et seq., or the federal Truth in Lending Act (“TILA”), as amended 15 U.S.C. ss. 1601 et seq., or any regulations adopted under such acts, constitutes a ground for disciplinary action as specified in the same section.

The bill also corrects technical issues in s. 494.00255, F.S. A principal loan originator is a licensed loan originator in charge of and responsible for a mortgage company (lender or broker). Under s. 494.00255(5), F.S., a principal loan originator is held responsible for the violations of his or her supervised loan originators in certain situations. The bill provides a technical amendment to conform cross-references, in that the term “associate” is replaced with “loan originator.”⁸

Section 2. This section amends s. 494.00331, F.S., regarding loan originator employment. Generally, loan originators are prohibited from working for more than one mortgage broker (business) or lender, whether as a W-2 employee or as a 1099 independent contractor. These changes provide an exception for “loan processors,” who are licensed as loan originators and perform information-gathering tasks, so that they may contract with or be employed by multiple companies. This section also provides an exception to the general rule in s. 494.0025(8), F.S., which prohibits the payment of fees or commissions in any mortgage loan transactions to any person other than a licensed or exempt mortgage broker (business) or lender.

Section 3. This section amends s. 494.0038(3)(c), F.S., and provides clarification as to the disclosure process required for the good faith estimate (GFE). The bill provides that the disclosure required by this subparagraph must be signed and dated by the borrower.

Section 4. This section removes the current statutory requirement that mortgage lenders file a new license application upon a change of control in the business.

⁵ 24 C.F.R Part 3500 (Federal Register / Vol. 73, No. 222 / Monday, November 17, 2008).

⁶ *Williams v. State*, 100 Fla. 1567, 125 So. 358 (Fla. 1930).

⁷ Effective October 1, 2010, Section 494.00255 will replace ss. 494.0041 and 494.0072, F.S., so that loan originators, mortgage brokers, and mortgage lenders are all subject to administrative penalties under ch. 494, F.S., in a single statutory section. Currently, this language appears separately in ss. 494.0041(2)(v) and 494.0072(2)(v), F.S.

⁸ “Associate” is repealed as a term on October 1, 2010 by s. 2, Ch. 2009-241, L.O.F.

Section 5. This act will take effect October 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on March 24, 2010:

The committee substitute deletes the current statutory requirement that mortgage lenders file a new license application, as the result of a change of control in the business.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
